

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

John Doe One, et al., :
 :
 Plaintiffs, :
 :
 v. : Case No. 2:02-cv-1147
 :
 Lincoln Park West 96 Limited : JUDGE FROST
 Partnership, et al., :
 :
 Defendants.

ORDER

A judgment has been rendered in this case against Defendant Anthony Gonzalez which, to date, is unsatisfied. On July 13, 2006, plaintiffs filed a motion for an order for a judgment debtor examination pursuant to, *inter alia*, Fed.R.Civ.P. 69(a). Plaintiffs have requested the United States Marshal serve any such order issued.

Once a judgment has been rendered, Fed.R.Civ.P. 69 permits the Court to proceed to execution pursuant to procedures available in the courts of the state in which the District Court sits. Ohio law, see O.R.C. §2333.09, authorizes a judgment debtor examination to be ordered. It is common practice in Ohio to have the Sheriff of the county serve a court's order of a judgment debtor examination. See, e.g., Smith v. L.D.H. Communications of Ohio, 1993 Ohio App. LEXIS 765 (Franklin Cty. 1993). When a county Sheriff serves process under state law in aid of execution, the United States Marshal is ordinarily substituted for the Sheriff once such process is served in federal court. LNC Investments v. Democratic Republic of Congo, 69 F.Supp. 2d 607 (D. Del. 1999). Further, Fed.R.Civ.P. 4.1(a) provides the process other than a summons or subpoena "shall be

served by a United States Marshal...." See also Hilao v. The State of Marcos, 95 F.3d 848 (9th Cir. 1996). Therefore, service of the order of judgment debtor examination by the Marshal is both appropriate and perhaps mandatory.

The Court notes that 28 U.S.C. §1921 authorizes the Marshal to charge fees to a litigant for the service of, *inter alia*, process in aid of execution. Plaintiffs shall pay the appropriate fees in order to obtain service by the United States Marshal.

Based upon the foregoing, plaintiffs' motion for an order for a judgment debtor examination (#107) is granted. Defendant Anthony Gonzalez is directed to appear on September 27, 2006 at 1:30 p.m. in Room 183, Joseph P. Kinneary United States Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215 and to give testimony under oath concerning the location of his assets. The United States Marshal is directed to serve a copy of this order and plaintiffs' motion on Mr. Gonzalez upon the payment of, or an appropriate deposit for the payment of, fees for service as provided in 28 U.S.C. §1921.

/s/ Terence P. Kemp
United States Magistrate Judge